IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 2469 of 2007()

CRA.665/2006 of VI ADDL.SESSIONS COURT, ERNAKULAM
CC.446/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONER: APPELLANTS/ ACCUSED;

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1. M/S.INTERNATIONAL MERCHANDISE TRADES
   AND EXPORTS (P) LTD., AVENUE ROAD, HIG-19
   CC 39/4572, PANAMPILLY NAGAR, ERNAKULAM-36.
   REPRESENTED BY ITS MANAGING DIRECTOR,
   SHRI.M.A.K.AZAD, AGED 52.

2. M.A.K.AZAD, AGED 52, MANAGING DIRECTOR,
   S/O.LATE MUHAMMED GHANI, M/S.INTERNATIONAL
   MERCHANDISE TRADES AND EXPORTS (P) LTD.,
   HIG 19, CC 39/4572, PANAMPILLY NAGAR, ERNAKULAM-36

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G
SRI.E.M.MURUGAN

RESPONDENTS: RESPONDENT/COMPLAINANT:

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1. M/S.COCHIN VINYLE, C.C.NO.VIII/1813,
   TOWN HALL ROAD, KOPOVAPADAM, KOCHI-2, REPRESENTED
   BY ITS PARTNER, R.ASHOK KUMAR, S/O.LATE R.G.PAI.

2. STATE OF KERALA REPRESENTED BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2469 OF 2007

Dated this the 26th day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.446/2003 on the file of the J.F.C.M.-II, Kochi challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected

the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. I am, however, inclined to modify the sentence imposed on the appellant provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner deposits before the trial court within one month from today a sum of Rs.5,000/-(Rupees five thousand only) by way of compensation under section 357(3) Cr.P.C. (less the amount already deposited), then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the balance deposit as aforesaid, the sentence imposed on him by the trial court shall revive. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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